

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MEADOWBROOK, INC.,

Plaintiff-Appellee/Cross-Appellee,

v

ROBERT R. MILLER,

Defendant-Appellant,

and

DAVID R. DUCLOS and DUCLOS INSURANCE  
AGENCY, INC.,

Defendants-Cross-Appellants.

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UNPUBLISHED  
September 30, 2004

No. 247552  
Oakland Circuit Court  
LC No. 02-0435490-CK

Before: Murphy, P.J., and O'Connell and Gage, JJ.

PER CURIAM.

Defendant, Robert R. Miller ("Miller"), appeals by leave granted from an order denying his motion for summary disposition. We reverse.

Miller was an insurance agent at the Saginaw office of Acordia of Michigan. On December 1, 1997, plaintiff purchased the assets of Acordia's Saginaw office and hired Miller as a senior vice-president. Before the buyout, plaintiff and Miller entered into a Confidential Information Agreement (CIA), whereby Miller agreed not to compete with plaintiff or solicit plaintiff's clients for a period of two years following termination of Miller's employment. Miller also agreed not to disclose any of plaintiff's confidential information. Miller was terminated on July 11, 2000 and later hired by defendant Duclos Insurance Agency, Inc., as an insurance representative.

On October 19, 2000, plaintiff filed a complaint,<sup>1</sup> alleging that Miller breached the CIA, tortiously interfered with plaintiff's business relationships, breached his fiduciary duties to

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<sup>1</sup> This case was assigned docket number 00-26952-CK in the lower court.

plaintiff, and engaged in unfair competition by soliciting and obtaining business from some of plaintiff's accounts. Plaintiff sought only injunctive relief. In November 2001, it was brought to plaintiff's attention that it had failed to request money damages in its original complaint. Discovery closed in April 2002, and plaintiff moved to amend its complaint in July 2002, four or six weeks before trial was scheduled to begin. On August 21, 2002, the trial court conducted a hearing on plaintiff's motion and ultimately denied it as untimely.

On September 5, 2002, plaintiff filed the instant complaint, alleging unjust enrichment and seeking money damages. Pursuant to MCL 2.116(C)(6), (C)(8), and (C)(10), Miller filed a motion for summary disposition, which the trial court denied on March 7, 2003. On its own motion, the trial court consolidated cases 00-26952-CK and 02-043549-CK on March 31, 2003.<sup>2</sup>

On appeal, Miller argues that the trial court's ruling was erroneous on several grounds. Miller first contends that summary disposition should have been granted because plaintiff's claims in the instant complaint are precluded by MCR 2.203(A), which provides:

In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

Miller is correct that the instant claims should have been raised in plaintiff's original complaint, as the claims arise from the same transaction or occurrence. MCR 2.203(A) requires "the pleader to state every claim against an opposing party that the pleader has at the time of serving the pleading if it arises out of the transaction or occurrence that is the subject matter of the action." *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 380; 521 NW2d 847 (1994).

Furthermore, summary disposition is appropriate under MCR 2.116(C)(6) where "[a]nother action has been initiated between the same parties involving the same claim." Plaintiff's assertion that the instant lawsuit is different from the original lawsuit because the relief sought is different is unconvincing. In *J D Candler Roofing Co v Dickson*, 149 Mich App 593, 601; 386 NW2d 605 (1986), this Court observed that summary disposition under MCR 2.116(C)(6) is appropriate where "[r]esolution of either action will require examination of the same operative facts." Here, plaintiff's attempt to distinguish the lawsuits based on the type of relief sought cannot prevail because the appropriate consideration is the underlying facts of the case. Similarly, plaintiff's explanation to the trial court that the inclusion of the unjust enrichment claim in the instant lawsuit somehow distinguishes the two cases is without legal support.

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<sup>2</sup> The trial court granted summary disposition on plaintiff's claims in defendants' favor in docket number 00-26952-CK on March 7, 2003. The remaining counter-claims in docket number 00-26952-CK were consolidated with the claim in docket number 02-043549-CK at issue in this appeal.

However, MCR 2.116(C)(6) does not require that all the parties and all the issues be identical. Rather, the two suits must be “between the same parties” and “involving the same claims.” Thus, “complete identity of the parties is not necessary,” and the two suits “must be based on the same or substantially the same cause of action.” [*J D Candler Roofing Co, supra* at 598, citing *Ross v Onyx Oil & Gas Corp*, 128 Mich App 660, 666-667; 341 NW2d 783 (1983). See also *Fast Air, Inc v Knight*, 235 Mich App 541, 545 n 1; 599 NW2d 489 (1999).]

Plaintiff’s addition of a new claim to the second complaint does not change the fact that both complaints arose from the same set of facts and involve substantially the same causes of action. At issue in both complaints is the effect, if any, of Miller’s agreeing to the CIA and whether Miller’s actions after his termination violated the agreement. Whether brought under the context of a breach of contract, tortious interference, breach of fiduciary duty, unfair competition, or unjust enrichment, to the extent that plaintiff’s complaint takes issue with these operative facts, plaintiff’s causes of action are substantially the same. Therefore, summary disposition is appropriate under MCR 2.116(C)(6) because this second cause of action was precluded under MCR 2.203(A).<sup>3</sup> Because we resolve the issue on appeal on this ground, we need not address plaintiff’s other arguments.

Reversed. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Peter D. O’Connell  
/s/ Hilda R. Gage

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<sup>3</sup> Because plaintiff’s claims are barred under MCR 2.203(A), the grant of summary disposition under MCR 2.116(C)(6) applies equally to the remaining defendants as it does to Miller.